

ORIGINAL

530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name BROWN GREGORY L.
 (Last) (First) (Initial)

Prisoner Number J-82241

Institutional Address 900 Quebec Ave.; Corcoran, CA 95031
IN PRO SE

JUL 22 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

GREGORY L. BROWN
 (Enter the full name of plaintiff in this action.)

vs.

KEN CLARK (WARDEN)

(Enter the full name of respondent(s) or jailor in this action)

CV

08

Case No. 3502 (PR)
 (To be provided by the clerk of court)

PETITION FOR A WRIT
 OF HABEAS CORPUS

*Evidentiary Hearing
 Requested*

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

MMC

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SUPERIOR COURT OF SAN FRANCISCO 850 BRYANT ST., S.F., CA 94103

Court

Location

- (b) Case number, if known No. 159271

- (c) Date and terms of sentence MAY 25, 1995; 56 years to life.

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where?

Name of Institution: SATF-CORCORAN STATE PRISON

Address: 900 QUEBEC AVE.; CORCORAN, CA 93212

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Court I: Conspiracy to commit murder; Penal Code 182.1, 187
Court II: Attempted murder; Penal Code 664/187

3. Did you have any of the following?

Yes X No

Yes X No

Yes _____ No X

4. How did you plead?

Guilty _____ Not Guilty X Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No _____

(b) Preliminary hearing Yes X No

(c) Time of plea Yes _____ No X N/A X

(d) Trial Yes X No

(e) Sentencing Yes X No _____

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes X No _____

8. Did you appeal your conviction? Yes X No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: 1998 Result: Affirmed

Supreme Court of California Yes X No

Year: 1998 Result: DENIED

Any other court Yes X No

Year: 1998- Result: Federal Courts

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes _____ No X

(c) Was there an opinion?

Yes _____ No X N/A X

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No X N/A X

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: SUPERIOR COURT OF SAN FRANCISCO

Type of Proceeding: STATE HABEAS CORPUS PETITION

Grounds raised (Be brief but specific):

a. INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL

b. PROSECUTORIAL MISCONDUCT

c. JUROR GAVE FALSE ANSWERS/STATEMENTS DURING VOIR DIRE
CONVICTION RELIES ON LESS THAN PROOF BEYOND A REASONABLE
DOUBT OF EVERY ELEMENT OF THE CRIMES CHARGED

Result: DENIED; SEE ATTACHMENT #1 Date of Result: JULY 5, 2007

II. Name of Court: COURT OF APPEAL OF THE STATE OF CALIFORNIA

Type of Proceeding: STATE HABEAS CORPUS PETITION

Grounds raised (Be brief but specific):

- 1 a. INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL
 2 b. PROSECUTORIAL MISCONDUCT
 3 c. JUROR GAVE FALSE ANSWERS/STATEMENTS DURING VOIR DIRE
 4 d. CONVICTION RELIES ON LESS THAN PROOF BEYOND A
PERSONABLE DOUBT OF EVERY ELEMENT OF THE CRIMES CHARGED.

5 Result: DENIED; SEE ATTACHMENT #2 Date of Result: MAY 30, 2007

6 III. Name of Court: SUPREME COURT OF CALIFORNIA

7 Type of Proceeding: STATE HABEAS CORPUS PETITION

8 Grounds raised (Be brief but specific):

- 9 a. INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL
 10 b. PROSECUTORIAL MISCONDUCT
 11 c. JUROR GAVE FALSE ANSWERS/STATEMENTS DURING VOIR DIRE
 12 d. CONVICTION RELIES ON LESS THAN PROOF BEYOND A REASONABLE
DOUBT OF EVERY ELEMENT OF THE CRIMES CHARGED.

13 Result: DENIED; SEE ATTACHMENT #3 Date of Result: JAN. 30, 2008

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

- 17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No X

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: SEE FOLLOWING PAGES

6
7 Supporting Facts: SAME AS ABOVE

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9
10
11 Claim Two: SAME AS ABOVE

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13 Supporting Facts: SAME AS ABOVE

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15
16
17 Claim Three: SAME AS ABOVE

18
19 Supporting Facts: SAME AS ABOVE

20
21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 N/A

B. Grounds For Relief

CLAIM ONE

GREG's right to a fair trial and due process, as guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution, was violated when the prosecutor maliciously and intentionally introduced false and unsupported and deceitful material statements at trial. Supporting cases, but not limited to: DARDEN V. WAINWRIGHT, 477 U.S. 168 (1986); BRECHT V. ABRAHAMSON, 509 U.S. 619 (1993); DONNELLY V. DECHRISTOFORO, 416 U.S. 637; IN RE WINSHIP, 397 U.S. 358 (1970); BERGER V. UNITED STATES, 295 U.S. 78 (1935); MILLER V. PATE, 386 U.S. 1 (1967).

It was prosecutorial misconduct and malicious prosecution for formal San Francisco Prosecutor Floyd "Andrews" to use false and unsupported and deceitful material statements during his "Closing Arguments" at trial to acquire GREG's conviction for conspiracy to commit murder and attempted murder of Robin Williams.

In closing, Andrews told the jury that WAIN FAIR wrote the note "for GREGORY BROWN," (RT 1349.)¹ and "... he (GREG) can get her (Robin Williams) out to Jerrold Avenue and shoot her and leave her dead through the other two (Wanda Fair and Joseph Diggs)." (RT 1349.) Andrews further repeatedly exhorted the jury to being in a "guilty" verdict, not based on the evidence, but "BECAUSE

¹ All Reporter's/Clerk's Transcripts referred to in these papers can be found in "Exhibit-A" attached hereto.

Continuation Of "Claim 1; Page #2

1 they did it." (RT 1350.) The trial record is devoid
 2 of any evidence to support any of those accusations.
 3 There was no evidence introduced at trial that showed
 4 Fain wrote the note "for Gregory Brown." There was
 5 no evidence introduced at trial that showed Greg had
 6 any connection to the trip that Fain, Diggs and Williams
 7 took to Jerrold Avenue. There was no evidence
 8 introduced at trial from which a rational inference may
 9 be made that Greg agreed with Fain, Diggs or anyone
 10 else to take Robin Williams' life, or to do her any harm
 11 at all. And nowhere in the trial record is there any
 12 evidence as to who actually shot Williams.

13 As demonstrated above, not only did Andrews
 14 failed to limit the scope of his closing arguments
 15 to the evidence presented at trial but he also
 16 deliberately and consciously introduced numerous false
 17 and unsupported material statements which rested
 18 exclusively on the issue of guilt. Additionally,
 19 Andrews' exhortations of the jury to bring in a "guilty,"
 20 verdict, by any means other than the evidence, "because
 21 they did it" amount to malicious prosecution and
 22 several instances of prosecutorial misconduct because:
 23 (1) it was contrary to the evidence presented at trial;
 24 (2) it was an injection of his personal opinion or belief;
 25 (3) it influenced and inflamed the jury's prejudices
 26 against Greg; (4) it encouraged the jury to

CONTINUATION OF "CLAIM 1"; PAGE 3

1 disregard the court's instructions concerning innocence
 2 and guilt; and (5) it diverted the jury's attention from
 3 its duty to decide the case on the merit of the evidence
 4 presented at trial.

5 But, just as equally prejudicial, it negated the
 6 fact that other people could have been responsible for
 7 the shooting of Robin Williams. On cross-examination,
 8 Williams was questioned about various persons who might
 9 bear ill will towards her. In January 1994, just a
 10 year prior to her shooting, Robin Williams was convicted
 11 of a residential burglary, and named three black males
 12 who were also involved. (RT 573, 587-588, 641.)

13 After that burglary, Coaky, the boyfriend of the woman
 14 whose house she had burglarized, beat her up. (RT 583.)
 15 Williams had also incurred drug debts in the past.
 16 (RT 576, 580.) However, she denied having any drug
 17 debts on February 7, 1995, and did not remember ever
 18 being threatened by drug dealers to whom she owed
 19 money. (RT 576, 580, 582.) She said that she knew
 20 Irwin Berry at Sunnydale, but did not remember him
 21 hitting her with a gun because of some debts she owed
 22 him. (RT 582.) She specifically denied owing any
 23 money to a man named "Tails" from the Sunnydale area,
 24 and said that she did not remember him coming up to
 25 her the night before February 7, 1995 and pointing a
 26 gun at her. (RT 581-582.) However, Daffie Hayes

Continuation Of "Claim 1," Page # 4

1 testified that she was talking on the telephone with a
 2 friend at her home in the Sunnydale Projects on the
 3 afternoon of February 6, 1995 when the friend said,
 4 "Oh, my God, Tails pulled a gun on Robin." Robin
 5 referred to Robin Williams. (RT 1005.) Hayes also
 6 testified that sometime during the last couple of months
 7 Phoebe's apartment at 56 Santos had caught on fire.
 8 Williams and Phoebe were once roommates at 56 Santos.
 9 (RT 1005-1006.) Over the years, Williams had gotten
 10 into fights at Sunnydale. (RT 584-585.) Williams
 11 admitted that she might have some enemies around
 12 the city. (RT 586.)

13 Andrews' false and unsupported material statements
 14 implanted in his closing arguments, whether individually
 15 or collectively, so infected the trial outcome as to
 16 create a genuine effect on the jury's verdict, especially
 17 when considering the fact that the trial judge did not
 18 instruct the jury to disregard the improper statements.
 19 There is absolutely no way a rational jury could have
 20 found Greg guilty of the crimes accused absent the
 21 mentioned statements in Andrews' closing.

22 Prosecutor Andrews' intentional and malicious use
 23 of false and deceitful material statements in his
 24 "Opening Statements" at trial were so improper
 25 that they infected the trial with unfairness as
 26 to make Greg's resulting convictions a denial of due

Continuation Of "Claim 1"; Page # 5

1 process and a fair trial. Andrews' opening statements
 2 alleged, "She (Robin Williams) was shot because she made
 3 a statement to the police about Gregory Brown, about
 4 him selling drugs, about him having a gun. She was shot
 5 to punish her for that statement and to prevent her from
 6 testifying in future court appearances." (RT 314.)

7 Andrews failed to introduce any evidence at trial as to
 8 why Robin Williams was shot. Andrews introduced no
 9 evidence that Williams was shot because she made a
 10 statement to the police "about Gregory Brown." Andrews
 11 introduced no evidence that Williams was shot because her
 12 statement mentioned Greg "selling drugs." Andrews
 13 introduced no evidence that Williams was shot because
 14 her statement mentioned Greg "having a gun." Andrews
 15 introduced no evidence that Williams "was shot to
 16 punish her for that statement" to the police.

17 Andrews introduced no evidence that Williams was shot
 18 "to prevent her from testifying in future court
 19 appearances." Furthermore, Andrews completely
 20 failed to introduce any evidence at trial as to why
 21 Williams was shot, and there was no trial evidence
 22 as to why.

23 Moreover, Robin Williams' trial testimony totally
 24 contradicted the improper statements given by Andrews in
 25 his opening statements, while at the same time
 26 exonerating Greg on all charges relating to her shooting.

Continuation of "Claim 1"; Page #6

Williams testified at trial that on January 6, she was visiting Greg at 126 Blythdale, when the police came. She saw a gun in Greg's hand and a bag of crack in the other. (RT 511.) She made a statement to the police as to what she saw. (RT 513.) Some days later she was at a friend's house when Wanda "Fain" delivered a note to her, that included a photo of her taken some years before by Greg. Greg was nearby when the note was delivered, standing outside on a porch. (RT 515.) Fain said Greg wanted to talk to her. (RT 517.) She did not speak to Greg because she considered the note threatening and was scared. (RT 518.) About a week and a half later, she met Greg on the street and they spoke. He asked her to stay out of sight, and not to testify at his upcoming hearing, and in return he "would take care of" her as long as she didn't testify. (RT 519.) She was satisfied with the conversation and returned to her regular visits to 126 Blythdale, going there about every other day. She went there to talk to Greg and they were friends. (RT 520.) Greg never threatened her, and she believed he had no intention of hurting her. (RT 557.)

Andrews was aware that Williams would testify as she did, because it was relatively a recital of her preliminary hearing testimony. (RT 11-16; 51-52.) Nevertheless, Andrews deliberately, consciously and

Continuation Of "Claim 1"; Page # 7

1 maliciously used false and deceitful material statements
2 in his opening statements to manipulate the jury.

3 This fact is highlighted by Andrews' calculated
4 (and successful) efforts to paint GREG AS A heartless
5 dope dealer who has previously captured and corrupted
6 the victim, Robin Williams. Thus, for example, in his
7 opening statements Andrews said:

8 "Robin is going to tell you that she is addicted
9 to COCAINE, that she had been supplied
10 COCAINE by GREGORY BROWN and other people
11 That she did a lot of things to
12 get her poison. She'd go to GREGORY BROWN
13 and get drugs there. She's traded drug
14 for sex with Mr. Brown."

15 (RT 315, line 28; 316, line 1-7.) Of course, there was
16 NO EVIDENCE adduced at trial to support this assertion.
17 Absent the maliciously false and deceitful statements
18 embedded in Andrews' opening statements, no rational
19 jury could have reached a guilty verdict against GREG
20 because there was simply NO EVIDENCE introduced at
21 trial connecting him to the shooting of Robin Williams.
22 Indeed, the improper statements created such a
23 substantial and injurious effect on the jury's decision
24 AS TO RENDER GREG'S CONVICTIONS UNCONSTITUTIONAL.

25 / / / /

26 / / / /

/ / / /

Continuation Of "Claim 1"; Page #8

1 GREG's right to a fair trial and due process, under
2 the Fifth and Fourteenth Amendments of the United
3 States Constitution, was violated as a result of several
4 instances of prosecutorial misconduct as set forth herein.

5 Based on the above, the Court must grant GREG's
6 relief to GREG on this ground and enter a judgment
7 of acquittal because there is no evidence to support
8 a re-trial; and/or any other relief the Court deems
9 fair and just. GREG also asks the Court to hold an
10 evidentiary hearing so that he can produce the
11 prosecutorial misconduct evidence in which he contends.
12

Claim Two

GREG's right to effective assistance of trial counsel, as guaranteed under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, was violated when counsel (1) failed to object to the prosecutor's false and unsupported material statements at trial;

(2) failed to challenge questionable overt acts; and (3) failed to use preemptory challenge to excuse a bias juror. Supporting cases, but not limited:

Strickland v. Washington, 466 U.S. 668 (1984); Cronic v. United States, 466 U.S. 648 (1984); Brecht v. Abrahamson, 507 U.S. 619 (1993); Donnelly v. DeChristoforo, 416 U.S. 637 (1974).

As stated in "Claim One" and supported by the record, during Closing Arguments, the prosecutor told the jury that Wanda Fain wrote the note "for Gregory Brown, (RT 1349) and "... he (GREG) can get her (Robin Williams) out to Terrold Avenue and shoot her and leave her dead through the other two (Fain and Joseph Diggs)." (RT 1349.) The prosecutor further repeatedly exhorted the jury to bring in a "guilty" verdict, not based on the evidence, but "Because they did it." (RT 1350.) There was not a scintilla of evidence presented at trial that supports any of those false material statements. Any reasonably effective counsel would have fervently objected to each and every one of those improper statements, particularly, in light of the

CONT. "Claim 2"; Page #2

1 fact that closing arguments are limited to the issue
2 in the case and the evidence that has been presented.
3 Counsel's non-objections to the false and unsupported
4 material statements allowed the prosecutor to:
5 (1) argue facts that are not supported by the evidence
6 in the record; (2) inject his personal beliefs and
7 opinions; (3) influence and inflame the jury's
8 prejudices against GREG; (4) encourage the jury to
9 disregard the court's instruction regarding innocence
10 and guilt; and (5) divert the jury's attention from
11 its duty to decide the case on the merit of the
12 evidence presented at trial. Moreover, counsel's
13 non-objections gave credence to the prosecutor's
14 baseless opening statements.

15 Had counsel objected to the improper material
16 statements given by the prosecutor in his closing
17 arguments, the objections would have undoubtedly
18 resulted in the judge ordering the jury to disregard
19 the statements which would have put the jury on notice
20 that they are not allowed to consider the improper
21 statements, and that alone could have changed the
22 outcome of the trial. However, counsel's failure to
23 object to the false and unsupported material statements
24 resulted in and contributed to and proximately
25 caused GREG's convictions for the crimes charged
26 and subjected him to an unfair trial, a bias jury,
27 prosecutorial misconduct, and a conviction on less than
28 proof beyond a reasonable doubt. Indeed,

"Claim 2"; Page #3

1 COUNSEL'S NON-OBJECTIONS TO THE STATEMENTS IN
2 QUESTION AMOUNT TO ~~DEFECTIVE~~ AND INEFFECTIVE
3 REPRESENTATION.

4 TRIAL COUNSEL'S FAILURE TO CHALLENGE THE VALIDITY
5 AND THE LEGALITY OF THE OVERT ACTS IN THE MOTION TO
6 DISMISS (CALIF. PENAL CODE SEC. 995 MOTION) CONSTITUTES
7 INEFFECTIVE TRIAL REPRESENTATION. (CT 70, 152; RT 27.)

8 TO SUPPORT A CRIME OF CONSPIRACY, THE PROSECUTION
9 MUST PROVE THE COMMISSION OF AN OVERT ACT BY ONE OR
10 MORE OF THE PARTIES ENGAGED IN THE AGREED UPON

11 CONSPIRACY. IN THIS CASE, ONLY FOUR OVERT ACTS IN
12 SUPPORT OF THE CONSPIRACY TO COMMIT MURDER OF
13 ROBIN WILLIAMS WAS RELATED TO GREG (NOS. 2, 4, 5,

14 AND 6.) OVERT ACT NO. 2 ALLEGED THAT GREG TOOK A
15 PHOTO AND GAVE IT TO WANDA FAIN; NO. 4 ALLEGED THAT
16 GREG ACCOMPANIED FAIN TO DELIVER A NOTE; NO. 5
17 ALLEGED THAT GREG ENCOURAGED FAIN AND JOSEPH DIGGS
18 TO MURDER ROBIN WILLIAMS; AND NO. 6 ALLEGED THAT
19 GREG AND FAIN RESIDED AT 126 BLYTHDALE. (CT 1-4.)

20 HOWEVER, THERE WAS NO FINDING OF OVERT ACT NO. 6;
21 NO EVIDENCE TO SUPPORT NO. 5; AND NOS. 2 AND 4
22 FAIL BECAUSE (1) THERE IS NO EVIDENCE OF AN AGREEMENT
23 BETWEEN GREG AND ANYONE TO COMMIT MURDER AND
24 (2) THEY DO NOT MEET THE LEGAL REQUIREMENT OF AN
25 OVERT ACT. IN LIGHT OF THE FACT THAT GREG PLED
26 NOT GUILTY TO THE CRIMES CHARGED (CT 9-11), ANY
27 REASONABLY EFFECTIVE COUNSEL WOULD HAVE MOVED TO
28 CHALLENGE ALL EVIDENCE AGAINST HIS CLIENT IN WHICH THE

"Claim 2"; Page # 4

1 PROSECUTION RELIES UPON TO OBTAIN A CONVICTION. IT IS
2 ~~REASONABLE~~ TO ASSUME THAT HAD COUNSEL CHALLENGED THE
3 OVERT ACTS, THE PROSECUTION WOULD HAVE BEEN FORCED TO
4 PRODUCE SUFFICIENT EVIDENCE TO SUPPORT EACH ACT OR RUN
5 THE RISK OF HAVING ONE OR MORE ACTS DISMISSED.
6 AS SHOWN HEREIN, THE OVERT ACTS WERE EITHER NOT ACTS
7 IN AND OF THEMSELVES OR UNSUPPORTED OR LACKED FINDING.
8 THEREFORE, HAD COUNSEL CHALLENGE THE OVERT ACTS IT IS
9 MORE THAN LIKELY THAT ONE OR MORE OR ALL OF THE ACTS
10 WOULD HAVE BEEN DISMISSED WHICH WOULD HAVE FURTHER
11 WEAKEN THE PROSECUTION'S CASE OR RESULTED IN THE ENTIRE
12 CASE AGAINST GREG BEING DISMISSED, BECAUSE, THE
13 ESSENCE OF A CONSPIRACY LIES WITHIN THE COMMISSION
14 OF AN OVERT ACT.

15 HERE, THE PROSECUTION'S CASE AGAINST GREG IS
16 NON-EXISTENT BY MOST STANDARDS, THEREFORE, A MINIMAL
17 OF ERROR SUCH AS THE FAILURE TO CHALLENGE THE OVERT ACTS
18 CONTRIBUTED TO OR CAUSED GREG TO BE SUBJECTED TO AN
19 UNFAIR TRIAL, A BIAS JURY, PROSECUTORIAL MISCONDUCT, AND
20 A CONVICTION ON LESS THAN PROOF BEYOND A REASONABLE DOUBT.

21 TRIAL COUNSEL'S FAILURE TO USE PREEMPTORY CHALLENGE
22 TO EXCUSE A BIAS JUROR FROM THE JURY PANEL CONSTITUTES
23 INEFFECTIVE TRIAL REPRESENTATION. DURING VOIR DIRE,
24 JUROR JOHN ELWOOD WAS QUESTIONED AND ANSWERED:

25 MR. FUETSCH (CO-DEFENDANT WANDA FAIR'S COUNSEL):

26 "DOES ANYONE HAVE A PROBLEM OR WOULD THEY HAVE A
27 PROBLEM WITH FOLLOWING THE INSTRUCTIONS OF THE COURT
28 EVEN IF THE RESULT THAT WOULD BE REACHED BY FOLLOWING THE

Continuation Of "Claim 2"; Page # 5

1 INSTRUCTIONS OF THE COURT WERE CONTRARY TO YOUR GUT
2 RETENTION IN A CASE AS SERIOUS AS THE THAT'S CHARGED HERE?"

3 PROSPECTIVE JUROR: "I THINK I WOULD HAVE A PROBLEM
4 WITH IT."

5 MR. FUETSCH: "... COULD YOU EXPLAIN WHAT YOU MEAN
6 BY YOU WOULD HAVE A PROBLEM WITH THAT?"

7 PROSPECTIVE JUROR: "I BELIEVE THERE'S A HIGHER
8 AUTHORITY THAN LEGAL AUTHORITY THAT IS LIKE MORAL AUTHORITY,
9 AND TO FOLLOW LIKE A SET OF RULES RATHER THAN MORE OF A
10 MORAL THING, I THINK I WOULD BE HARDPRESSED TO FOLLOW THE
11 SET OF RULES THAT ARE OUTLINED BY LAW."

12 "... BUT I THINK IF YOU MISCONSTRUCT THE CONSTITUTION
13 OR BROADEN ITS ACTUAL AUTHORITY, THEN I THINK THAT
14 COULD BE POTENTIALLY WRONG."

15 (RT 132-133.)

16 MR. ARIAN (GREEN'S TRIAL COUNSEL):

17 "MR. ELWOOD, I HEARD YOU SAY SOMETHING ABOUT
18 BROADENING THE AUTHORITY OF THE CONSTITUTION. DO YOU RECALL
19 THAT COMMENT?"

20 PROSPECTIVE JUROR: "I DO."

21 MR. ARIAN: "I WONDER IF YOU COULD SAY ANY MORE
22 ABOUT THAT. I DIDN'T GET YOUR COMPLETE THOUGHT."

23 PROSPECTIVE JUROR: "MY THOUGHT IS A LOT OF, LET'S
24 SAY, SOMEBODY'S ON TRIAL, THE JURORS SIT THROUGH THE
25 ENTIRE TRIAL, THEY HAVE A GUT FEELING THAT THESE DEFENDANTS
26 ARE, LET'S SAY, GUILTY, BUT A LOT OF CIRCUMSTANTIAL

Continuation Of "Claim 2"; Page #6

1 EVIDENCE HAS BEEN BROUGHT IN AND IT'S BEEN FOUND -- OR A
 2 LEGAL ISSUE HAS BEEN BROUGHT UP, A MINOR LEGAL ISSUE THAT
 3 SPEAKS TO THEIR INNOCENCE. YOU'RE SUPPOSED TO THINK
 4 THEY'RE INNOCENT EVEN THOUGH THEY'RE GUILTY, BECAUSE IT'S
 5 A LEGAL ARGUMENT AND IT TAKES PRECEDENCE OVER HOW YOU FEEL."

6 MR. ARIAN: "YOU'RE SAYING THAT AS A JUROR YOUR GUT
 7 REACTION IS VERY IMPORTANT AND YOU'RE GOING TO PAY A LOT
 8 OF ATTENTION TO THAT?"

9 PROSPECTIVE JUROR: "IF YOU'VE LISTENED TO ALL THE
 10 FACTS AND YOU SAY, YES, THEY ARE INNOCENT OR GUILTY, BUT
 11 SOME LEGAL PRECEDENCE MAKES YOU DISMISS THAT, THEN I
 12 HAVE A BIG PROBLEM WITH THAT."

13 MR. ARIAN: "YOU MIGHT NOT BE ABLE TO DO THAT?"

14 PROSPECTIVE JUROR: "NO, I WOULD NOT."

15 MR. ARIAN: "WOULD THAT HOLD IF THE JUDGE AT THE
 16 CLOSE OF THE CASE INSTRUCTED YOU THAT YOU WERE TO CONSIDER
 17 THIS EVIDENCE IN A CERTAIN WAY AND THE INSTRUCTIONS OF THE
 18 JUDGE WENT COUNTER TO THE FEELINGS YOU JUST DESCRIBED."

19 PROSPECTIVE JUROR: "I REALLY DON'T KNOW SITTING
 20 HERE RIGHT NOW."

21 MR. ARIAN: "WOULD YOU HAVE TROUBLE WITH IT?"

22 PROSPECTIVE JUROR: "I WOULD HAVE MAJOR PROBLEMS."

23 (RT 142-143)

24 THE COURT: "AT THIS POINT DOES ANY PARTY WISH
 25 TO ENTER A CHALLENGE FOR CAUSE?"

26 1111

Continuation Of "Claim 2"; Page # 7

1 But before you do that, Mr. Elwood, I was little
2 unclear about your statements.

3 Let me just read this question to you again:
4 It [sic] important that I have your assurance that you
5 will without reservation follow my instructions and
6 rulings on the law and will apply that law to the case.
7 To put it differently, whether you approve or disapprove
8 of my instructions, it is your solemn duty to accept as
9 correct my statements of the law. You may not
10 substitute your own idea of what you think the law
11 ought to be.

12 Would you be able to follow the law as given
13 by me in this case?"

14 Prospective Juror: "I would, but I may have a
15 problem with that, internal conflict."

16 (RT 158-159)

17 As demonstrated, juror Elwood's responses during
18 voir dire were evasive and misleading and concealed his
19 unwillingness to follow the court's instructions. Any
20 reasonably effective counsel would have used a preemptory
21 challenge to excuse juror Elwood from the jury panel as a
22 result of his explicit or implicit allegiance to his "gut"
23 feelings opposed to the law and instructions given by
24 the court. Moreover, Elwood's declaration illustrates
25 an abundance of juror misconduct (CT 451-452),
26 therefore, it is reasonable to assume that Elwood's

Continuation Of "Claim Two"; Page # 8

Reliance on his gut feelings during deliberations, rather than the Court's instructions, was influential in the jury's decision to find GREG guilty of the crimes charged, particularly since the verdicts were contrary to law. Counsel's failure to excuse potential bias juror Elwood from the jury panel contributed to or caused GREG's deprivation of a fair trial and impartial jury.

GREG's right to effective assistance of trial counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution was violated when counsel failed to (1) object to the prosecutor's ~~false~~ and unsupported material statements during trial; (2) challenge questionable overt acts regarding the conspiracy charge; and (3) use preemptory challenge to excuse a bias juror from the jury panel.

Based on the above, the Court must grant GREG habeas relief on this claim and enter a judgment of acquittal because there is no evidence to support a re-trial; and/or grant GREG any other relief the Court deems fair and just. GREG also asks the Court to hold an evidentiary hearing so that he can produce the ineffective assistance of trial counsel evidence in which he contends.

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Claim Three

GREG's right to effective assistance of appellate counsel, as guaranteed under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, was violated when counsel failed to discover and include non-frivolous material claims into the appellant's brief. Supporting cases, but not limited to: Smith V. Robbins, 528 U.S. 259 (2000); Brecht V. Abrahamson, 507 U.S. 619 (1993); Donnelly V. DeChristoforo, 416 U.S. 637 (1974).

It was ineffective and defective representation of appellate counsel when counsel failed to raise the following claims on appeal: (1) Prosecutorial misconduct, as fully stated herein at "Claim One"; (2) Ineffective assistance of trial counsel, as fully stated herein at "Claim Two"; (3) GREG's convictions are based on less than proof beyond a reasonable doubt of every element of the crimes charged, as fully stated below at "Claim Four"; and (4) Juror gave false answers/statements during voir dire, as fully stated below at "Claim Five." As demonstrated, none of these claims are frivolous.

Any reasonably effective appellate counsel would have raised each of the mentioned claims on direct appeal or at least filed a motion in the Court of Appeal to expand his appointment in order to file and consolidate a state habeas corpus petition concerning these claims. Indeed, the mentioned

"Claim Three"; Page #2

1 NON-frivolous claims, if only raised, would have
2 provided evidentiary support for the claims raised
3 in the appellant's brief and contributed to the
4 perseverance of a successful appeal. However,
5 appellate counsel's failure to raise the claims in
6 question deprived GREG of a prosperous and
7 triumphant appeal and the right to effective
8 representation of counsel on appeal in violation of his
9 Fifth, Sixth, and Fourteenth Amendments of the
10 United States Constitution.

11 Based on the above, the Court must grant GREG
12 habeas relief on this claim, and any other relief the
13 Court deems fair and just. GREG also asks the Court
14 to hold an evidentiary hearing so that he can
15 produce the ineffective assistance of appellate
16 counsel evidence in which he contends.

CLAIM FOUR

GREG'S right to a fair trial and due process, as guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution, was violated as a result of his convictions being based on less than proof beyond a reasonable doubt of every element of the crimes charged. Supporting cases, but not limited to: In re Winship, 397 U.S. 358 (1970); Leavitt v. Vasquez, 875 F.2d 260 (9th Cir. 1989).

No rational trier of facts could have found the essential elements of the crimes charged against GREG, beyond a reasonable doubt.

On March 17, 1995, Prosecutor Floyd Andrews filed his Information in this case. Count I of the Information accused GREG of conspiracy to commit murder (CT 1.) and Count II accused him of attempted murder (CT 4.). The Information alleged that the attempted murder was willful, deliberate, and premeditated. (CT 5.) As to the attempted murder count, the Information also alleged that GREG personally inflicted great bodily injury upon Robin "Williams." (CT 5.) The Information set out 14 overt acts in support of the conspiracy accusation, naming GREG in only four overt acts (Nos. 2, 4, 5 and 6.). (CT 1-4.) Overt Act No. 2 accused

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Continuation Of "Claim 4" Page #2

1 GREG of taking a photo and giving it to Wanda "Fain";
 2 No. 4 accused GREG of accompanying FAIN to deliver a
 3 note; No. 5 accused GREG of encouraging FAIN and
 4 Joseph "Diggs" to murder Robin Williams; and No. 6 accused
 5 GREG and FAIN of residing at 126 Blythdale. Overt Act
 6 Nos. 2 and 4 are meaningless in the context of the
 7 conspiracy charge because there was no evidence of any
 8 agreement, between GREG and another or others
 9 to commit murder. But, more importantly, those two
 10 "acts" do not meet the legal requirement of an
 11 "overt act." The jury made a determination that GREG
 12 encouraged FAIN and Diggs to murder Robin Williams
 13 (Verdict, Overt Act No. 5), but there is not a shred of
 14 admissible evidence presented at trial from which this
 15 conclusion could logically be reached. And there was
 16 no finding of overt act No. 6. (Verdict, Overt Act No. 6.)
 17 There was no sufficient evidence of an overt act
 18 supporting the charge of conspiracy to commit murder.
 19 The crime of conspiracy is defined in the California Penal
 20 Code (Sec. 182, subd. (a)(1), 184) as two or more persons
 21 conspiring to commit any crime, together with proof of
 22 the commission of an overt act by one or more of the
 23 parties to such agreement in furtherance thereof.
 24 Conspiracy is a specific intent crime. The specific
 25 intent required divides logically into two elements
 26 (a) the intent to agree, or conspire, and (b) the intent

Continuation of "Claim 4"; Page # 3

1 to commit the offense which is the object of the conspiracy.
 2 To sustain a conviction for conspiracy to commit murder,
 3 the prosecution must show not only that the conspirators
 4 intended to agree but also that they intended to kill
 5 the victim.

6 The evidence introduced at trial, as it pertains to
 7 GREG may be summarized as follows:

8 1.) He was arrested on January 6, 1995, at
 9 126 Blythdale, while in possession of a handgun and
 10 crack cocaine. Robin Williams made a statement to
 11 police incriminating GREG.

12 2.) He was present when a purportedly threatening
 13 note, written by co-defendant Wanda Fain, on paper from
 14 a notebook belonging to Fain, was delivered to Williams.
 15 The note came with a photograph of her taken by GREG
 16 five years before.

17 3.) GREG and Williams met, and GREG agreed to
 18 provide Williams unspecified remuneration if she would
 19 refrain from testifying against him at an upcoming
 20 preliminary hearing. The two resumed their previously
 21 friendly relationship.

22 4.) GREG was present at 126 Blythdale on
 23 February 7, until about 4:00 to 6:30 P.M. that evening.
 24 Williams, Fain and Digs left to take the bus about 7:30 P.M.
 25 // //

26 // //

Continuation Of "Claim 4"; Page # 4

1 First, the January 6, arrest could only be considered on
 2 the issue of GREG's motive to commit the crimes alleged.
 3 (RT 347-348; 1213-1215.) Clearly, "motive" is not an
 4 essential element of either crime charged. Indeed,
 5 motive is different from intent (1 Witkin, California
 6 Criminal Law (2nd edition 1988), sec. 100, p. 118), and
 7 does not establish intent.

8 Second, the alleged threatening note was written by FAIR
 9 on her paper. (RT 727-729, 935.) It was delivered
 10 about three weeks before the February 7, 1995 shooting of
 11 Williams. A reasonable trier of facts could infer that
 12 GREG was associated with the note, but it is not
 13 reasonable to interpret the note as evidencing an agreement
 14 between FAIR and GREG to commit any crime, let alone an
 15 agreement to kill Williams. Furthermore, about a week
 16 and a half after Williams received the note, or about two
 17 weeks before February 7, 1995, Williams and GREG
 18 reconciled. (RT 520, 545-546, 557.) From that time
 19 forward, up to and including February 7, 1995, Williams
 20 visited with GREG every day or every other day. There is
 21 no evidence to suggest that these approximately seven to
 22 fourteen visits were anything but friendly. Indeed, Williams
 23 testified that GREG specifically indicated to her that he
 24 had no intention to hurt her. (RT 557.)

25 Third, given the evidence that GREG either lived at
 26 126 Blythdale or was there often and Williams considered

Continuation Of "Claim 4"; Page # 5

1 him her friend, nothing can be inferred from GREG's
 2 PRESENCE AT OR ABSENCE from 126 Blythdale on the day
 3 WILLIAMS WAS SHOT. WILLIAMS' trial testimony varied as to
 4 WHEN GREG left on that day. (RT 547-530.) She also
 5 testified that she did not remember when he left. (RT 551-
 6 552.) At the March 6, 1995 preliminary examination,
 7 she testified that he left early, around 4:00 P.M.
 8 (RT 547-549, 551.)

9 Nowhere in the record is there any evidence from which
 10 A RATIONAL INFERENCE may be made that GREG agreed with
 11 ANYONE to take Robin Williams' life, or to do her any harm
 12 At all. There is no evidence which even arguably shows
 13 that GREG had an intent to kill Williams. There is
 14 no evidence linking GREG to any weapon associated with
 15 the shooting of Williams. There is no other physical
 16 evidence linking GREG to the shooting of Williams. There is
 17 no evidence of any discussions among GREG, FAIR, and
 18 Diggs regarding killing Williams. There is no evidence
 19 that GREG had any connection to the trip that FAIR, Diggs,
 20 and Williams took to Third Street. And there is nothing
 21 in the statements that FAIR and Diggs gave to the police
 22 that connected GREG to the shooting of Williams.

23 The fact that GREG knew FAIR and perhaps Diggs is
 24 not sufficient. Mere association is not enough to
 25 establish the essential elements of either crime alleged.

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Continuation Of "Claim 4"; Page # 6

1 As shown above, there is no evidence to support
 2 the essential elements of the crime of conspiracy to
 3 commit murder.

4 Even less evidence exists with respect to the finding
 5 of the crime of attempted murder of Robin Williams.

6 Where, as here, the prosecution has charge the attempt
 7 to be "willful, deliberate, and premeditated,"

8 it must adduce evidence from which it may be
 9 rationally inferred that, "... the would-be slayer
 10 (weighed and considered) the question of killing and the
 11 reason for and against such choice and, having in mind
 12 the consequences, decides to kill another human being."

13 CALTIC § 67.

14 No such evidence exists in the record. Nor is there
 15 any evidence of the specific intent element needed to
 16 satisfy the attempted murder requirement. Such intent
 17 must be shown at the time of the overt act by which
 18 the attempt is manifested; and it cannot be inferred
 19 from the commission of another crime.

20 Another essential element of the crime of attempt
 21 is the requirement of a direct but ineffectual act done
 22 toward the commission of the act alleged. The act
 23 must be overt and unequivocal; it must constitute the
 24 beginning of the consummation of the attempted crime.
 25 Preparation alone is not sufficient.

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Continuation Of "Claim 4"; Page # 7

1 Just as there is no evidence to support the elements
2 of GREG's conspiracy to commit murder conviction of
3 Robin Williams, there is no evidence to support the
4 elements of his attempted murder conviction of her.
5 There is no evidence to support a finding that GREG
6 had a specific intent to kill Williams. There is
7 no evidence that GREG attempted a direct but
8 ineffectual act of killing Williams. There is no evidence
9 that GREG participated in the shooting of Williams,
10 directly or indirectly. There is no evidence that GREG
11 aided and abetted an attempt to kill Williams. There is
12 no weapon or physical evidence linking GREG to the shooting
13 of Williams. There is no evidence that GREG even
14 suspected that FAIN, Diggs or anyone else had any
15 criminal intent towards Williams, and certainly no
16 evidence that he shared in any criminal intent toward her.
17 Furthermore, just as the note cannot support the
18 conspiracy conviction, it cannot support the attempted
19 murder conviction. GREG's presence when FAIN
20 delivered the note cannot be interpreted as providing
21 encouragement to FAIN, Diggs, or anyone else to shoot
22 Williams three weeks later; and the reconciliation
23 between Williams and GREG are irreconcilable with a
24 finding that GREG advised or encouraged the attempted
25 murder of Williams. Williams and FAIN reconciled also.
26 (RT 546-556.) Even putting aside the reconciliation

Confirmation Of "Claim 4"; Page 8

1 of Williams with Fain and Greg, the attempted murder of
 2 Williams was not a reasonably foreseeable consequence of
 3 Greg's standing on a porch while Fain delivered a note and
 4 photograph to Williams.

5 Nonetheless, motive cannot supply the specific intent
 6 elements of attempted murder. Nor can association establish
 7 either the requisite encouragement or intent to kill.

8 Nor can Greg's brief presence at 126 Blythdale on the day
 9 of the shooting establish either the requisite encouragement
 10 or intent to kill, particularly, in light of the evidence
 11 that he either frequent or lived there.

12 A microscopic examination of the trial transcript
 13 fails to reveal ANY evidence from which a reasonable
 14 person could make a rational inference establishing any
 15 of the elements of conspiracy to commit murder and
 16 attempted murder.

17 Greg's convictions for conspiracy to commit murder
 18 and attempted murder based on absent and/or less than
 19 proof beyond a reasonable doubt of every element of
 20 the accused crimes violated his right to a fair trial
 21 and due process under the Fifth and Fourteenth
 22 Amendments of the United States Constitution.

23 Based on the above, the court must grant habeas
 24 relief to Greg and enter a judgment of acquittal.
 25 Acquittal is required because, at the close of the
 26 prosecution's case-in-chief, the trial court improperly

Continuation Of "Claim 4"; Page #9

1 denied GREG's California Penal Code sec. 1118.1 motion for
2 judgment of acquittal. (CT 48, 55; RT 1031-1037.)

3 REVERSAL ALONE IS NOT AN ADEQUATE REMEDY BECAUSE A RETRIAL
4 COULD THEN RESULT, WHICH WOULD VIOLATE THE STATE AND
5 FEDERAL CONSTITUTIONAL PROHIBITIONS AGAINST DOUBLE JEOPARDY.

6 GREG ALSO ASKS THE COURT TO HOLD AN EVIDENTIARY
7 HEARING SO THAT HE CAN PRODUCE THE EVIDENCE IN
8 WHICH HE CONTENDS.

CLAIM FIVE

GREG'S right to a fair trial and impartial jury, as guaranteed under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, was violated when a juror gave false answers and misleading statements during voir dire. Supporting cases, but not limited to: Irwin v. Dowd, 366 U.S. 717 (1961); Brecht v. Abrahamson, 509 U.S. 619 (1993); Donnelly v. DeChristoforo, 416 U.S. 637 (1974); In re Winship, 397 U.S. 358 (1970); Carter v. Kentucky, 450 U.S. 288.

Juror John Elwood committed serious misconduct when he intentionally gave false answers and misleading statements during voir dire.

During voir dire, Mr. Fuetsch, defense counsel for co-defendant Wanda Fain, asked the jury: "Does anyone have a problem or would they have a problem with following the instructions of the Court even if the result that would be reached by following instructions of the Court were contrary to your gut reaction in a case as serious as the one that's charged here?" (RT 132, line 3-8.) The only juror who indicated he would have a problem with following the Court instructions is juror John Elwood. (RT 132-133 (from line 3 of 132 to line 13 of 133); 142-143 (from line 11 of 142 to line 28 of 143); 158-159, line 28-13).

During voir dire, Mr. Zilversmit, co-defendant Joseph Diggs counsel, asked juror Mr. Castillo, Ms. Owens, Ms. Smith, and

Continuation Of "Claim 5"; Page # 2

1 Mr. Bower if they heard the judge's instruction on the
 2 presumption of innocence and whether they would be able to
 3 vote not guilty assuming there was no evidence to the
 4 contrary; each juror indicated they would. (RT 136-137.)

5 Mr. Ziversmit also asked the jury if they would be able
 6 to vote not guilty if the prosecution failed to produce
 7 evidence of the defendants' guilt beyond a reasonable doubt;
 8 none of the jurors indicated to the contrary. (RT 140-141.)

9 During voir dire, Mr. Arias, Greg's trial defense
 10 counsel, asked the jury if any of them are confused about
 11 the "difference between a mere suspicion, a creating of a
 12 suspicion and creating evidence that convinces beyond
 13 a reasonable doubt"; none of the jurors indicated
 14 confusion. (RT 147.)

15 As demonstrated in the excruciating declarations of juror
 16 John Elwood, juror Karen Pemberton, and Maggie Richard,
 17 Greg's trial defense investigator, the jury failed to answer
 18 questions honestly during voir dire regarding whether or
 19 not they would follow the court's instructions.

20
 21
 22 1 Following the verdicts, all the defendants, including
 23 Greg, filed motions for new trial, alleging among other
 24 things, jury misconduct during deliberation. However,
 25 this ground, as well as all other grounds set forth in these
 26 papers, was not raised in the motions for new trial by
 defense counsels nor on direct appeal.

Continuation Of "Claim 5" ; Page # 3

Juror Karen Pemberton, in her declaration given to counsel for co-defendant Joseph Diggs states among other things:

During deliberations, a juror had a bus schedule with them. We looked at the schedule and we talked about how long the bus ride took, when they (Robin, Cornelia & Joseph) got on the bus, and how long it took to get where they were going...

When we went into the jury after arguments, some people were saying "they don't have a case." I originally believed they were talking about the prosecution. But later, I realized that more than half of the jurors were talking about how the defense had not proven their case.

(CT 453-454.) The clear import of this discussion between jurors is that they did not reply the court's instruction on the burden of proof in a criminal case.

(CALJIC Nos. 2.61, 2.90, 2.91; CT 334, 340-341; RT 1219, 1222-1223. Also, see, RT 93-94.) Juror Karen P. also advised Maggie Richards, Green's investigator, that "a couple" of jurors commented on Green's failure to testify in his own defense being an indication of his guilt. (See Maggie Richards' sworn declaration at, CT 473-474.)

The instructions placing the burden of proof on the prosecution are grounded in the Due Process Clause of the Fourteenth Amendment of the United States Constitution and play a vital role in the American scheme of criminal

Continuation Of "Claim 5"; Page # 4

1 procedure. The jurors clearly disobeyed the court's
 2 instructions regarding burden of proof when, according to
 3 the declaration of juror Karen P. more than half the
 4 jurors said, during deliberations, that the defense had
 5 not proven their case. There is nothing in the record
 6 to suggest that the credibility of Karen P.'s declaration
 7 on this issue was questioned, and it certainly was not
 8 countered. There is no case law or other authority that
 9 Gregg is aware of that states that the declaration of a
 10 single juror cannot establish misconduct, that offending
 11 jurors must be identified by name, or that all twelve
 12 jurors must disobey court instructions in order to
 13 establish misconduct. Indeed, one juror is enough.

14 The instruction that no inference is to be drawn
 15 from a defendant's failure to testify is grounded in
 16 the Fifth and Fourteenth Amendments of the United States
 17 Constitution. The jury was instructed as follows:

18 "A defendant in a criminal trial has a constitutional
 19 right not to testify. You must not draw any
 20 inference from the fact that a defendant does not
 21 testify. Further, you must neither discuss this matter
 22 nor permit it to enter into your deliberation in any
 23 way." (CALJIC 2.60; CT 333; RT 1219.) The jurors
 24 misconduct in disobeying this instruction was inherently
 25 and substantially likely to have influenced and biased the

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Continuation Of "Claim 5"; Page # 5

involved jurors so as to prejudice GREG.

There are hardly two matters more basic to a fair jury trial than the principles embodied in the instructions referred to above.

Juror John Elwood, in his declaration given to counsel for co-defendant Joseph Diggs states under oath. Among other things:

During our deliberations we prepared a time line... for the evening of the incident. We were particularly concerned with the period between 7:30 pm and 8:35 pm on the night of the shooting. To help reconstruct what happened during that period, we consulted bus schedules that jurors Alvin Bernstein and Monnell Beurmann brought in on the second day of deliberations. These schedules provided us information about the intervals between buses and the frequency with which buses came; this information along with court testimony and statements helped us to fill in our time line from 7:30 pm until 8:35 pm on the night of the shooting...

There was also discussion about access to guns which was in reference to defendant GREG BROWN'S prior arrest.

There were also discussions about defendant GREG BROWN being a drug dealer and his propensity for violence and drugs and that kind of lifestyle. This was mostly in reference to defendant BROWN'S state of mind.

Continuation Of "Claim 5"; Page # 6

Some jurors also discussed that as a drug dealer, Brown's state of mind may be twisted and under hurry. Some jurors also discussed that as a drug dealer, Brown might feel that there would be no consequences to his actions if he killed Robin Williams. The jurors who brought up discussions of def. Brown's lifestyle were reminded by other jurors that this line of discussion was speculation and could not be considered in deliberations.

Someone also made reference to the fact that if you do crack cocaine, it does not mean you lose your memory.

(CT 451-452.) This statement taken on its face is clearly juror bias of the worst sort in and of itself. Nevertheless, juror Jordan Owens corroborated the fact that jury did in fact disregarded and disobeyed the court's instructions and considered the seizure of a gun and drugs from defendant Gregory Brown as evidence of his guilt in the charged crimes. (Declaration of Maggie Richards At, CT 473-474)

Early in the prosecution case, the trial court gave the following limiting instruction to the jury regarding the evidence seized during the January 6, 1995 arrest of Greg. The court admonished:

[T]he evidence or testimony that's being received at this point regarding the gun and cocaine seized at 126 Blythdale on January 26th [sic], 1995, in the presence of Mr. Brown is being offered only to show motive for Mr. Brown to

Continuation Of "Claim 5"; Page #7

from Ms. Williams. You may not consider this evidence for ANY OTHER purpose at this time.

(RT 347-348.) After the completion of the presentation of all of the evidence, the court gave the jury the following instructions:

Evidence was introduced of an arrest on January 6, 1995 of defendant Gregory Brown and seizure of guns and drugs from the premises of 126 Blythdale. This evidence was admitted and may be considered by you only for the purpose of showing a possible motive for the commission of the crimes charged. You're to consider this evidence only for the purpose of determining whether such motive exists and for no other purpose. Such evidence, if believed, was not received and may not be considered by you to prove that defendant Gregory Brown is a person of bad character or that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose of determining if it tends to show a motive for the commission of the crimes charged. For the limited purpose for which you may consider such evidence, you must weigh it in the same manner you do all other evidence in this case. You're not permitted to consider such evidence for ANY OTHER purpose.

Evidence that a gun was seized on January 6th, 1995, may not be considered by you to infer or prove that any of the defendants had a gun on February 7th, 1995, when Robin Williams was shot.

Certain evidence was admitted for a limited purpose. At the time this testimony was admitted you were admonished it could not be considered by you for any purpose other than the limited purpose for which it was admitted. Do not consider such evidence for ANY purpose except the limited purpose for which it was admitted.

Continuation of "Claim 5"; Page # 8

(RT 1213-1215.) These instructions were also provided to the jury in written form during their deliberations. (CT 306, 318-320, 323.)

Jurors clearly disregarded and disobeyed these instructions. Far from limiting their consideration of the evidence of the gun and cocaine to the issue whether Greg had a motive to harm Williams, jurors discussed that the January 6, 1995 gun and cocaine evidence showed that Greg had "access to guns," was "a drug dealer," had a "propensity for violence and drugs," had a "twisted and power hungry state of mind," and felt that "there would be no consequences to his actions if he killed Robin Williams." The fact that some jurors reminded other jurors not to consider this line of discussion does not indicate whether any or all of the improper discussion ceased, and there is no indication that the reminder was given by the jury foreman or otherwise carried special authority. And the reminder could not erase the previous improper discussion. The record is without any contradictory declarations on this issue. Nor is there any indication in the record that the prosecutor or the trial court questioned the credibility of juror John Elwood's declaration on this subject.

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Continuation Of "Claim 5"; Page # 9

The declaration of GREG's trial defense investigator, Maggie Richards, states, among other things:

On May 30, 1995, I spoke with juror Karen Pemberton by telephone. At that time, she told me she heard "a couple" jurors discussing the fact that defendant Gregory Brown did not testify in his own defense, and that this was an indication of guilt.

On May 30, 1995, I spoke with juror Alvin Bernstein by telephone. He told me that in jury deliberations ... jurors did consult maps and bus schedules.

On May 30, 1995, I spoke with juror Jordan T. Owens by telephone. She told me that the jury considered as evidence of one of defendant's having shot the victim that there were guns in Gregory Brown's past, and that he was a drug dealer.

(CT 473-474.)

The sworn declarations of jurors John Elwood and Karen Pemberton and that of investigator Maggie Richards, demonstrate that the jurors consulted bus schedules and/or maps during deliberations. The record shows that neither were admitted into evidence at trial. It is juror misconduct to consider and discuss "evidence" other than that which was received at trial, whether a juror acted intentionally or inadvertently in being exposed to the outside source of information.

The jurors were also specifically instructed:

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source...

Continuation Of "Claim 5"; Page # 10

1 You must not make any independent
 2 investigation of the facts ... nor consider
 3 nor discuss facts as to which there's no
 evidence.

4 (CALJIC 1.03; CT 313; RT 1210.) Clearly, the jurors use
 5 of the bus schedules constituted misconduct.

6 Timing was an important issue in this case. The
 7 prosecution theory was that Fain, Diggs and Williams left
 8 126 Blythdale at around 7:30 p.m., walked to the bus stop,
 9 waited for the bus, rode the bus for twenty to twenty five
 10 minutes, and walked a block and a half, before co-defendants
 11 Fain and Diggs shot Williams. The wounded Williams was first
 12 discovered around 8:30 p.m. There is no evidence that Fain or
 13 Diggs were anywhere in sight at that time. Given all of this,
 14 plus the co-defendants' denial of any involvement in Williams'
 15 shooting, the expert witness evidence regarding Williams' memory
 16 problems, and the defense theories that third parties were
 17 responsible, the jury plainly had a question as to whether
 18 all that Williams described could have happened within
 19 the one hour time period. Thus, they obviously felt a need
 20 to fill in important gaps in the prosecution case time line,
 21 and used the bus schedules to do so. Inasmuch as Greg's
 22 culpability as a conspirator rested on the jury's
 23 evaluations of the actions of Fain's and Diggs and on the
 24 credibility and reliability of Williams' testimony, the
 25 jury's consultation of the bus schedules to bolster the
 26 prosecution's case was prejudicial to Greg.

Continuation of "Claim 5"; Page # 11

1 The sworn declaration of juror John Elwood makes clear
 2 that a juror injected his own outside expertise into deliberations.
 3 The comment of a juror that if you do crack cocaine it does not
 4 mean you lose your memory is also misconduct. The relationship
 5 between crack cocaine use and memory loss is not a subject of
 6 commonplace knowledge. Moreover, the juror comment is not
 7 a reasonable interpretation of expert witness psychiatrist
 8 Eugene Schoenfeld trial testimony. (RT 932-935.) The juror
 9 who made the comment regarding cocaine and memory was,
 10 clearly relying on first hand experience, observation, or study.
 11 As such, his comment injected his outside expertise into the
 12 deliberations, which constituted misconduct.

13 Here, the evidence is so very slim against Greg, non-
 14 existent by most standards, that a very minimal amount of
 15 error can have a substantial weight in affecting the verdict.
 16 All that ties Greg to the shooting of Robin Williams is, the
 17 January 6 arrest, and his connection to the delivery of a
 18 purportedly threatening note. Other than his presence earlier
 19 in the day, there is nothing connecting Greg to the events
 20 leading up to Williams' shooting. Absent the varieties of jury
 21 misconduct in this case, no trier of facts could have
 22 found Greg guilty of the crimes charged.

23 As stated herein, the defense counsels explicitly asked
 24 the jury material questions during voir dire which the
 25 jury intentionally failed to respond honestly to; specifically,
 26 the jury concealed their unwillingness to (1) follow the court's

Continuation Of "Claim 5; Page #12

1 instructions; (2) give the defendants, particularly GREG,
2 the presumption of innocence; (3) vote not guilty if the
3 prosecution failed to produce evidence of the defendants'
4 guilty beyond a reasonable doubt; and (4) ascertain
5 the "difference between a mere suspicion, a creating
6 of a suspicion and creating evidence that convinces
7 beyond a reasonable doubt." (RT 132; 136-137; 140-
8 141; 147.)

9 The juror's failure to respond honestly to the defense
10 counsel's questions during voir dire violated GREG's right
11 to a fair trial, an impartial jury, due process,
12 confrontation, and a verdict based on admissible trial
13 evidence under the Fifth, Sixth, and Fourteenth
14 Amendments of the United States Constitution.

15 Based on the above, the Court must grant GREG
16 habeas relief on this ground along with any other
17 relief the Court deems fair and just. GREG also asks
18 the Court to hold an evidentiary hearing so that he
19 can produce the evidence in which he contends.
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1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 SEE PAGES : 6, 14, 22, 24 AND 33 FOR THE NAME AND
5 CITATION OF THE CASES WHICH SUPPORT EACH CLAIM HEREIN.

6
7 Do you have an attorney for this petition? Yes _____ No X

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 Executed on July 8, 2008
13 April 15, 2008

14 Date

Gregory L. Brown

Signature of Petitioner

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20 (Rev. 6/02)
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ATTACHMENT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Department No. 22

IN THE MATTER OF THE APPLICATION)
OF)

WRIT NO. 5568

GREGORY L. BROWN)

ORDER

ENDORSED
FILED

San Francisco County Superior Court

Petitioner,)

MAY 30 2007

FOR A WRIT OF HABEAS CORPUS)

GORDON PARK-LI, Clerk

BY: CARLOS BARRAZA

Deputy Clerk

On April 25, 2007 this Court received a Petition for Writ of Habeas Corpus from petitioner Gregory L. Brown ("Petitioner"). On May 25, 1995, Petitioner was convicted of conspiring to commit murder and of attempted murder. On January 28, 1998, the First District Court of Appeal affirmed the judgment with sentencing modifications. On April 29, 1998, the California Supreme Court denied review. Petitioner is serving 56 years to life at Corcoran State Prison.

Petitioner seeks habeas relief on four grounds. He claims that the verdict was not supported by sufficient evidence and that the prosecutor "maliciously and intentionally introduced false and unsupported and deceitful material statements at trial." He also claims that jurors committed misconduct and that his trial and appellate counsel provided ineffective assistance of counsel.

Petitioner was convicted almost 12 years ago and the Court of Appeal affirmed his conviction over nine years ago. Under well-established California law, a petition should be filed as promptly as the circumstances allow. As a result, the petitioner must explain in detail and "justify any substantial delay in presenting a claim." (*In re Clark* (1993) 5 Cal.4th 750, 765); *In re Swain* (1949) 34 Cal.2d 300, 302.) Where there has been significant delay in seeking habeas relief, the petitioner must describe circumstances sufficient to justify or explain the delay. To avoid the bar of untimeliness, the petitioner has the burden of establishing: (1) the absence of substantial delay; (2) good cause

1 for the delay; or (3) that the claim falls within an exception to
2 the bar of untimeliness. (*In re Robbins* (1998) 18 Cal.4th 770,
3 781; see also *Clark, supra*, 5 Cal.4th at 775 ["[i]f a petitioner
4 had reason to suspect that a basis for habeas corpus relief was
available, but did nothing to promptly confirm those suspicions,
that failure must be justified".])

5 As an initial matter, Petitioner's insufficient evidence
6 and juror misconduct claims are barred because they were raised
7 - and rejected - on appeal. Because these issues were
8 "previously raised and rejected on direct appeal, and because
9 the [P]etitioner does not allege sufficient justification for
the issues['] renewal on habeas corpus," the issues are
"procedurally barred from being raised again." (*Harris, supra*,
5 Cal.4th at 825; see also *In re Sakarias* (2005) 35 Cal.4th 140,
145.)

10 Petitioner's ineffective assistance of trial and appellate
11 counsel claims fail for two reasons. First, he has failed to
12 justify the delay in bringing these claims. Instead of alleging
13 facts to demonstrate good cause for the delay, Petitioner claims
14 that he "lacked basic education and all legal knowledge, until now"
15 and that he was somehow prevented from seeking relief because he
16 has "been suffering from major depression and mental illness."
17 These contentions have no merit. Petitioner does not allege when
18 he began suffering "major depression and mental illness," nor does
19 he allege how these conditions prevented him from seeking writ
20 relief. Moreover, Petitioner does not explain how his alleged lack
21 of "legal knowledge" prevented him from consulting his appellate
22 attorney about a possible claim for ineffective assistance of trial
23 counsel, or from contacting an attorney to inquire into the quality
24 of representation provided by his appellate counsel.
25

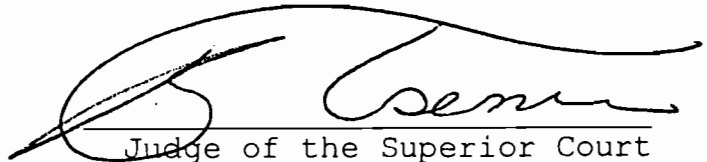
19 Even assuming Petitioner's ineffective assistance of
20 counsel claims are not time-barred, these claims fail because
21 Petitioner has not provided any documentation to support his
22 claims that his trial and appellate counsel provided ineffective
23 assistance. It is well settled that a petition for writ of
24 habeas corpus should: (1) state fully and with particularity
25 the facts upon which relief is sought; and (2) include copies of
reasonably available documentary evidence supporting the claim,
including pertinent portions of trial transcripts and affidavits
or declarations. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.)
Conclusory allegations made without any explanation of their
basis do not warrant relief. (*People v. Karis* (1988) 46 Cal.3d
612, 656; see also *In re Swain* (1949) 34 Cal.2d 300, 303-304.)

1 Petitioner's failure to attach any supporting documentation to
2 his petition prevents this Court from conducting a meaningful
review of his ineffective assistance of counsel claims.

3 "To establish ineffective assistance of counsel . . . a
4 defendant must show that counsel's representation fell below an
5 objective standard of reasonableness under prevailing
6 professional norms, and that counsel's deficient performance was
7 prejudicial, i.e., that a reasonable probability exists that,
8 but for counsel's failings, the result would have been more
favorable to the defendant." (*Strickland v. Washington* (1984)
9 466 U.S. 668, 687-688; *People v. Waidla* (2000) 22 Cal.4th 690,
10 718.) Even assuming Petitioner's claims about his attorneys'
11 conduct at trial and during his appeal are accurate, his claims
fail because he has not demonstrated that his counsels'
12 performance "fell below an objective standard of reasonableness"
and that there is a reasonable probability that, but for
13 counsel's alleged errors, "the result of the proceeding would
have been different." (*People v. Ledesma* (1987) 43 Cal.3d 171,
218.) "When a defendant challenges a conviction, the question
14 is whether there is a reasonable probability that, absent the
errors, the factfinder would have had a reasonable doubt
15 respecting guilt." (*Ledesma, supra*, 43 Cal.3d at 218, citing
Strickland, supra, 466 U.S. at 693-94].)

16 For the foregoing reasons, Petitioner's writ of habeas corpus
17 is DENIED.

18
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25
5/25/07
Date


Judge of the Superior Court

ATTACHMENT 2

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

FILED

JUL - 5 2007

Court of Appeal - First App. Dist.
DIANA HERBERT

by _____ DEPUTY

In re GREGORY L. BROWN,
on Habeas Corpus.

A118248

(San Francisco County
Super. Ct. No. 5568)

BY THE COURT:

The petition for writ of habeas corpus is denied. Petitioner has not demonstrated good cause for a delay of over 9 years in seeking habeas relief, nor has he shown his petition should be considered under one of the exceptions to the requirement that habeas relief be timely sought. (See *In re Robbins* (1998) 18 Cal.4th 770, 780-781.) Further, some of the claims asserted in the petition are barred because they were raised and rejected on appeal. (*In re Waltreus* (1965) 62 Cal.2d 218, 225.)

(Ruvolo, P.J., and Rivera, J., joined in the decision.)

JUL - 5 2007

RUVOLO, P.J.

Date: _____ P.J.

ATTACHMENT 3

S155258

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re GREGORY L. BROWN on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Swain* (1949) 34 Cal.2d 300, 304; *People v. Duvall* (1995) 9 Cal.4th 464, 474; *In re Waltreus* (1965) 62 Cal.2d 218; *In re Lindley* (1947) 29 Cal.2d 709; *In re Dixon* (1953) 41 Cal.2d 756.)

George, C. J., was absent and did not participate.

SUPREME COURT
FILED

JAN 30 2008

Frederick K. Ohlrich Clerk

Deputy

BAXTER

Acting Chief Justice

EXHIBIT A

001
FILED
San Francisco County Superior Court

MAR 17 1995

ALAN CARLSON, Clerk
Nolan G. & [illegible]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 159271
)	
)	
Plaintiff,)	
vs.	)	F. ANDREWS
)	
GREGORY BROWN, WANDA FAIN)	
and JOSEPH DIGGS,	)	<u>INFORMATION</u>
)	
)	
Defendants)	

COUNT I:

GREGORY BROWN, WANDA FAIN and JOSEPH DIGGS

are accused by the District Attorney of the City and County of San Francisco, State of California, by this Information, of the crime of felony, to wit: VIOLATION OF SECTION 182.1 OF THE CALIFORNIA PENAL CODE committed as follows: The said defendants on or about the 7th day of January, 1995 to the 7th day of February, 1995, both dates inclusive, at the City and County of San Francisco, State of California, did wilfully and unlawfully conspire together and with another person and persons whose identity is unknown to commit the crime of MURDER, in violation of Section 187 of the Penal Code, a felony; that pursuant to and for the purpose of carrying out the objects and purposes of the aforesaid conspiracy, the said defendants committed the following overt act and acts at and in the County of San Francisco:

OVERT ACTS

OVERT ACT NUMBER 1

It is alleged in the City and County of San Francisco, on or about the 7th day of January, 1995 to February 7, 1995, defendant Wanda Fain did write a note containing threats against Robin Williams.

People v. Gregory Brown, et al.

SC 159271

Page 2

OVERT ACT NUMBER 2

It is alleged in the City and County of San Francisco, on or about the 7th day of January, 1995 to February 7, 1995, defendant Wanda Fain did put the note in an envelope with a photograph of Robin Williams which was taken by defendant Gregory Brown and which was given to Fain by defendant Gregory Brown.

OVERT ACT NUMBER 3

It is alleged in the City and County of San Francisco, on or about the 7th day of January, 1995 to February 7, 1995, defendant Wanda Fain did deliver the threatening note and photograph to Robin Williams.

OVERT ACT NUMBER 4

It is alleged in the City and County of San Francisco, on or about the 7th day of January, 1995 to February 7, 1995, defendant Gregory Brown did accompany defendant Wanda Fain to deliver the threatening note to Robin Williams.

OVERT ACT NUMBER 5

It is alleged in the City and County of San Francisco, on or about the 7th day of January, 1995 to February 7, 1995, defendant Gregory Brown did encourage defendants Wanda Fain and Joseph Diggs to murder Robin Williams.

OVERT ACT NUMBER 6

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendants Gregory Brown, Wanda Fain and Joseph Diggs did reside at the same address of 126 Blythdale Street in San Francisco.

OVERT ACT NUMBER 7

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendant Wanda Fain did provide cocaine base, also called "crack" cocaine, to Robin Williams.

People v. Gregory Brown, et al.

SC 159271

Page 3

OVERT ACT NUMBER 8

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendant Wanda Fain did encourage Robin Williams to go to Jerrold Street with defendants Wanda Fain and Joseph Diggs.

OVERT ACT NUMBER 9

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendants Wanda Fain and Joseph Diggs did get on the Number 15 bus with Robin Williams.

OVERT ACT NUMBER 10

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendants Wanda Fain and Joseph Diggs did exit the bus with Robin Williams at 3rd and McKinnon Streets in San Francisco.

OVERT ACT NUMBER 11

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendants Wanda Fain and Joseph Diggs did take Robin Williams with them to Jerrold Street with the intention of murdering Robin Williams.

OVERT ACT NUMBER 12

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendants Wanda Fain and Joseph Diggs did walk on Jerrold Street approaching Quint Street with Robin Williams.

OVERT ACT NUMBER 13

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that while walking with Robin Williams defendants Wanda Fain and Joseph Diggs did shoot Robin Williams in the back of the head with a 9mm semi-automatic pistol.

604

People v. Gregory Brown, et al.SC 159271

Page 4

OVERT ACT NUMBER 14

It is alleged in the City and County of San Francisco, on or about the 7th day of February, 1995, that defendants Wanda Fain and Joseph Diggs did shoot at Robin Williams again while she was lying on the ground.

USE OF FIREARM ALLEGATION PURSUANT TO PENAL CODE SECTION 12022.5(a)
[As to defendant JOSEPH DIGGS only]:

It is further alleged that in the commission and attempted commission of the above offense, the said defendant, JOSEPH DIGGS, personally used a firearm, to wit, a 9 mm semi-automatic pistol, within the meaning of Penal Code Section 12022.5(a) and also causing the above offense to be a serious felony within the meaning of Penal Code Section 1192.7(c)(8).

ARMED WITH A FIREARM ALLEGATION PURSUANT TO PENAL CODE SECTION
12022(a)(1)[As to defendants GREGORY BROWN and WANDA FAIN only]:

It is further alleged that in the commission and attempted commission of the above offense a principal in said offense was armed with a firearm, to wit, a 9 mm semi-automatic pistol, said arming not being an element of the above offense, within the meaning of Penal Code Section 12022(a)(1).

ALLEGATION OF FELONY COMMITTED WHILE ON BAIL AND ON OWN RECOGNIZANCE
PURSUANT TO PENAL CODE SECTION 12022.1[As to defendant GREGORY BROWN
only]:

It is further alleged that the defendant, GREGORY BROWN, committed the above offense while he was released from custody in a felony offense, on bail and on his own recognizance, within the meaning of Penal Code Section 12022.1.

COUNT II:

The said defendants GREGORY BROWN, WANDA FAIN AND JOSEPH DIGGS, are further accused by the District Attorney of the City and County of San Francisco, State of California, by this Information, of the crime of felony, to wit: VIOLATION OF SECTION 664/187 OF THE CALIFORNIA PENAL CODE committed as follows: The said defendant on or about the 7th day of February, 1995, at the City and County of San Francisco, State of California, did wilfully, unlawfully, and with malice aforethought attempt to murder ROBIN WILLIAMS, a human being.

SUPERIOR COURT IN THE CITY AND COUNTY OF SAN FRANCISCO - MINUTES		009
People of the State of California vs. GREGORY L. BROWN <input checked="" type="checkbox"/> Present		
SC # 159271-01	Assistant DA of Record . <input type="checkbox"/> Present	Attorney of Record S. ARIAN <input checked="" type="checkbox"/> Present
	Clerk JOSIE C. ROQUE	Judge DAVID A. GARCIA
Reporter JOSEPH H. VICKSTEIN #4780, 850 BRYANT STREET, ROOM 306 - SAN FRANCISCO, CA 94103		

Cause on Calendar for Arraignment
 Special appearance by G. KOELLING, DA for the Assistant DA of Record.
 Defendant has retained ARIAN/S, Esq.

Count	Code	Section	Degree	MC #	Plea
1	PC	182.1/F		01563370	NG
2	PC	664.187/F		01563370	NG

Defendant waives formal reading of the Information.

Defendant is duly arraigned. Not guilty plea(s) as to each count and denial of any and all allegation(s), entered.

The defendant declares his/her true name to be that stated in the accusatory pleading.

Cause is ordered continued to 04/24/95 at 09:30 a.m. in Department S22 for Trial.

SUPERIOR COURT IN THE CITY AND COUNTY OF SAN FRANCISCO - MINUTES		019
People of the State of California vs. WANDA LOUISE FAIN <input checked="" type="checkbox"/> Present		
SC # 159271-02	Assistant DA of Record . <input type="checkbox"/> Present	Attorney of Record F. FUETSCH <input checked="" type="checkbox"/> Present
	Clerk JOSIE C. ROQUE	Judge DAVID A. GARCIA
Reporter JOSEPH H. VICKSTEIN #4780, 850 BRYANT STREET, ROOM 306 - SAN FRANCISCO, CA 94103		

Cause on Calendar for Arraignment
 Special appearance by G. KOELLING, DA for the Assistant DA of Record.
 Court has appointed FUETSCH/F, Public Defender.

Count	Code	Section	Degree	MC #	Plea
2	PC	664.187/F	1	01559424	NG
3	PC	245(A).2/F		01559424	NG
1	PC	182.1/F		01559424	NG

Defendant waives formal reading of the Information.

Defendant is duly arraigned. Not guilty plea(s) as to each count and denial of any and all allegation(s), entered.

The defendant declares his/her true name to be that stated in the accusatory pleading.

Cause is ordered continued to 04/24/95 at 09:30 a.m. in Department S22 for Trial.

SUPERIOR CO		IN THE CITY AND COUNTY OF SAN FRANCISCO		CISCO - MINUTES	011
People of the State of California vs. JOSEPH DIGGS <input checked="" type="checkbox"/> Present					
SC #	Assistant DA of Record	<input type="checkbox"/> Present	Attorney of Record	<input checked="" type="checkbox"/> Present	
159271-03	F. ANDREWS		MARC SILVERSMIT		
	Clerk		Judge		
	JOSIE C. ROQUE		DAVID A. GARCIA		
Reporter JOSEPH H. VICKSTEIN #4780, 850 BRYANT STREET, ROOM 306 - SAN FRANCISCO, CA 94103					

Cause on Calendar for Arraignment
 Special appearance by G. KOELLING, DA for the Assistant DA of Record.
 Court has appointed SILVERSMIT/MARC, conflict counsel.

Count	Code	Section	Degree	MC #	Plea
2	PC	664.187/F	1	01559442	NG
3	PC	245(A).2/F		01559442	NG
4	PC	12021A1/F		01559442	NG
1	PC	182.1/F		01559442	NG

Defendant waives formal reading of the Information.

Defendant is duly arraigned. Not guilty plea(s) as to each count and denial of any and all allegation(s), entered.

The defendant declares his/her true name to be that stated in the accusatory pleading.

Cause is ordered continued to 04/24/95 at 09:30 a.m. in Department S22 for Trial.

FILED 070
San Francisco County Superior Court

MAR 24 1995

ALAN GARLICK, Clerk

BY: [Signature] Deputy Clerk

STEPHEN ARIAN, Attorney at Law
State Bar No. 38939
Pier 33 South, #200
San Francisco, CA 94111
(415) 434-1550

Attorney for Defendant GREGORY L. BROWN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 159271-0/
)	
Plaintiff,	)	NOTICE OF MOTION FOR
	)	DISMISSAL OF COUNTS I
vs.	)	AND II OF THE INFORM-
	)	ATION UNDER SECTION 995
GREGORY L. BROWN,	)	OF THE PENAL CODE
WANDA FAIN, and JOSEPH DIGGS,)	
	)	Date: April 7, 1995
Defendants.	)	Time: 9:00 A.M.
	)	Dept: 23

To the District Attorney of the City and County of San Francisco and to FLOYD ANDREWS, Deputy District Attorney:

PLEASE TAKE NOTICE that on the 7 day of April 1995, at 9:00 A.M. or as soon thereafter as the matter may be heard in Department 23 of the above entitled court, defendant GREGORY L. BROWN, through counsel will move the court for dismissal of Count I and II of the indictment herein as it relates to said defendant GREGORY L. BROWN, and to strike the enhancement allegations as they relate to said GREGORY L. BROWN, all under Section 995 of the California State Penal Code.

This motion is made on the grounds that there is no competent evidence to show probable cause to hold defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA VS.

ACTION NO. 159271

<u>GREGORY L. BROWN</u>	<u>-1</u>	<u>F. Andrews</u>	
DEFENDANT	PRESENT	ASSISTANT D.A.	PRESENT
<u>WANDA LOUISE FAIN</u>	<u>-2</u>	<u>S. Arian</u>	
DEFENDANT	PRESENT	DEFENSE COUNSEL	PRESENT
<u>JOSEPH DIGGS</u>	<u>-3</u>	<u>F. Fuetsch PD</u>	
DEFENDANT	PRESENT	DEFENSE COUNSEL	PRESENT
		<u>M. Silversmit</u>	
		DEFENSE COUNSEL	PRESENT

=====

CAUSE ON CALENDAR Mo. 995 PC (all); Mo. handwriting exemplar (Diggs)
 Mo. discovery (Diggs); Motion for joinder in motions (Fain, Brown)

9:15 A.M.

The Court grants motion for joinder.

The Court grants the motion for discovery in part.

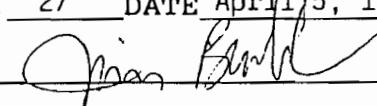
The Court grants the motion for handwriting exemplar.

9:30 A.M. The Court orders the matter continued to 1:30 P.M. for
 hearing on 995 PC motion.

2:50 P.M.

Hearing resumes. The Court grants the 995 PC motion as to defendant BROWN
 (Great Bodily Injury Allegation only). The 995 PC motion is denied in all
 other respects.

Defendants are given standing to participate in the 1538.5 PC hearing in case
 #159194 (Gregory Brown) Copy of proceedings had in that matter are attached
 and incorporated herein by reference.

DEPT. 27 DATE April 15, 1995 PAGE _____ATTEST:  DEPUTY CLERK

MARC J. ZILVERSMIT, ESQ.
 RIORDAN & ROSENTHAL
 Attorney At Law
 523 Octavia Street
 San Francisco, CA 94102
 Telephone: (415) 431-3472

Attorney for Defendant JOSEPH DIGGS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA	)	No. 159271
)	
Plaintiff,)	
	)	DECLARATION OF
vs.	)	<u>JUROR JOHN ELWOOD</u>
)	
JOSEPH DIGGS,)	
)	
Defendant.)	

I, John Elwood, declare under penalty of perjury that:

I was a juror in the case of People v. Joseph Diggs, Wanda Fain, and Gregory Brown, No. 159271.

During our deliberations we prepared a time line from January 6 to February 10 and made a time line for the evening of the incident. We were particularly concerned with the period between 7:30 pm and 8:35 pm on the night of the shooting. To help reconstruct what happened during that period, we consulted bus schedules that Jurors Alvin Bernstein and Monell Beurmann brought in on the second day of deliberations. These schedules provided us information about the intervals between buses and the frequency with which buses came; this information ^{came along 2 cont testimony} helped us fill ^{stated} in our time line from 7:30 pm until 8:35 pm on the night of the shooting

Declaration of John Elwood

Page 1

"A"

1 We also discussed a number of other things in our
2 deliberations. We discussed the inconsistencies between
3 defendant Wanda Fain's statement and defendant Joseph Diggs'
4 statement. We discussed how these inconsistencies demonstrated
5 that at least one of them was lying.


6 There was also discussion about access to guns which was in
7 reference to defendant Greg Brown's prior arrest.

8 There were also discussions about defendant Greg Brown being
9 a drug dealer and his propensity for violence and drugs and that
10 kind of lifestyle. This was mostly in reference to defendant
11 Brown's state of mind. Some jurors discussed that as a drug
12 dealer, Brown's state of mind may be twisted and power hungry.
13 Some jurors also discussed that as a drug dealer, Brown might

14 feel that there would be no consequences to his actions if he
15 killed Robin Williams. *The jurors who brought up discussions of def. Brown's lifestyle
were reminded by other jurors that this line of deliberation was speculation & could be
discussed in deliberations*
16 Someone also made reference to the fact that if you do crack
17 cocaine, it does not mean you lose your memory.

18 Some jurors also discussed defendant Joseph Diggs' medical
19 condition, specifically his tremor. Juror Jordan Owens stated
20 that this might explain how Diggs could have shot at Robin
21 Williams and missed.

22 Executed this 5 day of JULY, 1995 in San Francisco,
23 California.

24 
25 JOHN ELWOOD
26 Declarant

27 Declaration of John Elwood
28 Page 2

"A"

1 record that Mr. Brown personally did it?

2 MR. ANDREWS: I don't believe that with the conspiracy
3 count I have to prove personal great bodily injury.

4 THE COURT: Well, you read it. It says:

5 "It is further alleged in the commission of
6 the above offense said defendant, with the
7 intent to inflict such injury, personally
8 inflicted great bodily injury on Robin Williams."

If you look at page 6 of the Information.

MR. ANDREWS: If it's plead that way, it is incorrect.

The matter is submitted.

THE COURT: All right. Is the matter submitted?

3 MR. ARIAN: Submitted, your Honor.

4 THE COURT: All right. The Court will grant the 995
5 Motion as to the great bodily injury allegation as to Mr.
6 Brown. The other counts, the 995 motion is denied.

17 Let's go to the motion to suppress now.

18 All right. We will get started with it now. All right.
19 Call your first witness.

20 MR. ANDREWS: Thank you, your Honor.

21 I will call Officer Walsh to the stand.

22 I will ask that Officer Jefferson be designated as my
23 investigating officer.

24 THE COURT: All right.

25 MR. ARIAN: Your Honor, may I ask for an order excluding
26 all witnesses?

27 THE COURT: Yes. All witnesses will be ordered excluded
28 from the courtroom. You are not to discuss the testimony

instructions as it relates to how you are to conduct yourself. The process is as important as the product.

Does anyone have a problem or would they have a problem with following the instructions of the Court even if the result that would be reached by following the instructions of the Court were contrary to your gut reaction in a case as serious as the one that's charged here?

PROSPECTIVE JUROR: I think I would have a problem with it.

MR. FUETSCH: Do you feel as though -- well, actually could you explain what you mean by you would have a problem with that?

PROSPECTIVE JUROR: I believe there's a higher authority than legal authority that is like moral authority, and to follow like a set of rules rather than more of a moral thing, I think I would be hardpressed to follow the set of rules that are outlined by law.

MR. FUETSCH: Let me ask you a pointed question. If, for example, and I'm not saying it's going to happen, if, for example, in the middle of the night the police came to your home and forced their way in and just searched your house and in your home discovered bombs, machine guns, bottom making material, whatever they discovered is illegal. And the prosecution sought to prosecute you for the crime of possessing that material or that item. There are laws, of course, that allow you as an individual through your attorney or

1 individually to challenge the admissibility of such
2 evidence, and the basis or reason for the law that allows
3 you to challenge such evidence is the law of the
4 constitution. That is, while we may not condone your
5 conduct in possessing that, we nevertheless must hold the
6 authorities to a very high standard. In the case I've
7 described, that evidence wouldn't be admissible against
8 you to convict you.

9 Do you think that's wrong?

10 PROSPECTIVE JUROR: No. In that particular
11 case I don't think that's wrong, but I think if you
12 misconstrue the constitution or broaden its actual
13 authority, then I think that could be potentially wrong.

14 MR. FUETSCH: But in the illustration I've
15 given you --

16 PROSPECTIVE JUROR: That's fine, I wouldn't
17 have any problem with that.

18 MR. FUETSCH: One individual, and I think
19 actually it was you again, indicated that you had been
20 attacked some years ago by someone, correct?

21 PROSPECTIVE JUROR: That's correct.

22 MR. FUETSCH: And you suffered a concussion
23 as a result of that?

24 PROSPECTIVE JUROR: A mild concussion.

25 MR. FUETSCH: Has anybody else here
26 suffered a severe injury, say in, for example, an
27 automobile accident or been attacked, anything wherein
28 they've lost consciousness as a result of that injury.

9 1 All of us have ways of looking at things that control the
2 way we lead our lives. We may think of that as a bias,
3 but it's there. In this rather imperfect process we try
4 to get at that a little bit, and I'm sure you'll all
5 agree this is an imperfect process.

6 In that connection, and I don't want
7 anyone, as Mr. Zilversmit said, to think that any of us
8 are picking on you. We're really not, but when we hear
9 things we feel the necessity within the time allotted to
10 us to explore it.

11 Mr. Elwood, I heard you say something about
12 broadening the authority of the constitution. Do you
13 recall that comment?

14 PROSPECTIVE JUROR: I do.

15 MR. ARIAN: I wonder if you could say any
16 more about that. I didn't get your complete thought.

17 PROSPECTIVE JUROR: My thought is a lot of,
18 let's say, somebody's on trial, the jurors sit through
19 the entire trial, they have a gut feeling that these
20 defendants are, let's say, guilty, but a lot of
21 circumstantial evidence has been brought in and it's been
22 found -- or a legal issue has been brought up, a minor
23 legal issue that speaks to their innocence. You're
24 supposed to think they're innocent even though they're
25 guilty, because it's a legal argument and it takes
26 precedence over how you feel. You're suppose to follow
27 that rather than now you feel, and you're supposed to
28 say, yes, in fact, they're innocent when you feel they're

9 1 guilty.

2 MR. ARIAN: As I hear what you're telling
3 me, and please correct me, you're saying that as a juror
4 your gut reaction is very important and you're going to
5 pay a lot of attention to that?

6 PROSPECTIVE JUROR: No, you pay attention
7 to the facts, but I'm saying that the facts don't
8 necessarily jibe with, let's say, some legal arguments
9 that take precedence over the facts. If you've listened
10 to all the facts and you say, yes, they are innocent or
11 guilty, but some legal precedence makes you dismiss that,
12 then I have a big problem with that.

13 MR. ARIAN: You might not be able to do
14 that?

15 PROSPECTIVE JUROR: No, I would not.

16 MR. ARIAN: Would that hold if the judge at
17 the close of the case instructed you that you were to
18 consider this evidence in a certain way and the
19 instructions of the judge went counter to the feelings
20 you just described, would you be forced to go with your
21 feelings or the higher moral law you found, or would you
22 feel compelled to follow the instructions of the Court
23 with respect to that specific issue that was presented?

24 PROSPECTIVE JUROR: I really don't know
25 sitting here right now.

26 MR. ARIAN: Would you have trouble with it?

27 PROSPECTIVE JUROR: I would have major
28 problems.

2 1 MR. ANDREWS: Was that a trial here on the
2 third floor of the building?

3 PROSPECTIVE JUROR: Uh-huh.

4 MR. ANDREWS: Was that by any chance in
5 front of the same judge?

6 PROSPECTIVE JUROR: No, it was not.

7 MR. ANDREWS: Was there a feeling on your
8 part that it was as a result of a lack -- something
9 lacking on the part of the police department?

10 PROSPECTIVE JUROR: No.

11 MR. ANDREWS: How about the District
12 Attorney?

13 PROSPECTIVE JUROR: No.

14 MR. ANDREWS: When you say there was not
15 enough evidence, was there an identification issue.

16 MR. ZILVERSMIT: I'll object. He's seeking
17 to find out how this juror voted on that.

18 MR. ANDREWS: I didn't ask that.

19 THE COURT: Sustained.

20 MR. ANDREWS: Did you -- you don't have any
21 problem with serving as a juror today on a similar kind
22 of case?

23 PROSPECTIVE JUROR: No.

24 MR. ANDREWS: Thank you, Your Honor, I have
25 nothing further.

26 THE COURT: At this point does any party
27 wish to enter a challenge for cause?

28 But before you do that, Mr. Elwood, I was

2 1 little unclear about your statements.

2 Let me just read this question to you
3 again: It important that I have your assurance that you
4 will without reservation follow my instructions and
5 rulings on the law and will apply that law to the case.
6 To put it differently, whether you approve or disapprove
7 of my instructions, it is your solemn duty to accept as
8 correct my statements of the law. You may not substitute
9 your own idea of what you think the law ought to be.

10 Would you be able to follow the law as
11 given by me in this case?

12 PROSPECTIVE JUROR: I would, but I may have
13 a problem with that, internal conflict.

14 THE COURT: I understand that. Okay.

15 Any party wish to exercise a challenge for
16 cause? Please approach sidebar with the court reporter.

17 [Following bench conference not reported:]

18 MR. ZILVERSMIT: I have three challenges
19 for cause, Judge. Wiley, Elwood and Lee.

20 Taking those, Mr. Lee because he obviously
21 doesn't comprehend sufficient language to participate as
22 a juror.

23 MR. ANDREWS: Are we doing --

24 THE COURT: Cause.

25 MR. ANDREWS: -- the whole 24 or just
26 people in the box?

27 THE COURT: All 24.

28 MR. ZILVERSMIT: So Mr. Lee because of

5 1 The defense talk about, and it's all smoke
2 and mirrors, he talks about all these other people who
3 could want to kill her; it's the 240 pound guy, the 190
4 pound guy, all these people.

5 And yet how does this work? How do you we
6 get those people on Jerrold Avenue to shoot her in the
7 head? It does not happen. How else do you figure it?

6 8 Robin is wandering down the street and --
9 finish the sentence somehow. You can't. The only thing
10 that works, the only thing that fits the physical
11 evidence, the testimony of the witnesses, the taped
12 statements, testimony from the experts, the only thing
13 that works is that she's on Jerrold Avenue because she's
14 following Joseph Diggs and Wanda Fain.

15 The only theory that fits about the note,
16 Wanda is not writing this because she's mad, she's
17 writing this for Gregory Brown. They're all in the same
18 house. Gregory has got a problem, he's got a court case
19 coming up. But he knows how to deal with this problem.
20 Because he's got a gullible little girl, and he can get
21 her out to Jerrold Avenue and shoot her and leave her for
22 dead through the other two, and that's it. That would be
23 easier. That will be clean. If they had done the wrong
24 right and killed her, you wouldn't be here today because
25 we wouldn't have any clue.

26 And that's all I have to say. I want you
27 to look carefully at what you've heard, what you saw. If
28 somebody said something on that stand, just because we're

6 1 in court, we're in a formal setting, everybody says
2 "please" and "thank you," does not mean you should
3 believe anything you hear here that you wouldn't believe
4 outside those doors?

5 Use your common sense. You certainly
6 shouldn't believe anything you've heard here unless it
7 fits the evidence you've heard.

8 Based on that I'm asking you to find the
9 defendants guilty of attempted murder of Robin Williams.
10 Because they did it.

11 Conspiracy to commit murder.

12 Assault with a deadly weapon.

13 Possession of a firearm by an ex-felon.

14 Because they did it, for no other reason.
15 They did it, and that's why you're here today.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Andrews.

18 At this point, ladies and gentlemen, it's
19 quarter to 5. I have about ten minutes worth of
20 instructions to read you, the concluding instructions,
21 then I want to go over the verdict forms with you which
22 is going to take some time.

23 Rather than do that today we're going to
24 reconvene tomorrow at 10. I will then finish the
25 instructions, go over the jury forms, and we'll be
26 finished.

27 I know one of you has a problem tomorrow,
28 and hopefully you can change the appointment either later

DECLARATION OF SERVICE

CASE NAME : GREGORY L. BROWN V. KEN CLARK (WARDEN)

CASE No. : _____

I declare :

On July 8, 2008, I served the attached Petition For Writ Of Habeas Corpus by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the prison mail collection system at SATF-CORCORAN, in California, addressed as follows :

Clerk, U.S. District Court
Northern District of California
450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/8/08

Gregory L. Brown
Gregory L. Brown

Legal Materials Only

GREGORY L. BROWN
J-82241 (CS-104) 08/04
P.O. Box 5246
Corcoran, CA 93212

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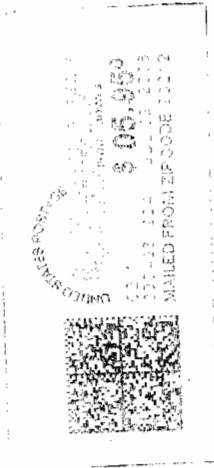
JUL 16 2008

RICHARD W. WIERING
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